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عدد خاص
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المشرف العام

أ. د. محمد أحمد عبدالرحمن
مدير الجامعة

رئيس التحرير

أ. د. خالد توكال

نائب رئيس التحرير

د. لطيفة الحمادي

أمين التحرير

د. عبد السلام أحمد أبو سمحة

هيئة التحرير

د. مجاهد منصور - د. عماد حمدي

د. عبد الناصر يوسف

لجنة الترجمة: أ. صالح العزام، أ. داليا شنواني، أ. مجدولين الحمد

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البريد الإلكتروني: awuj@alwasl.ac.ae, research@alwasl.ac.ae

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**Disclosure of Patient's Medical Record to the Spouse
An Islamic Law Perspective**

**كتم الطبيب الأسرار الطبية وإفشاؤها بين
الأزواج من منظور الشريعة الإسلامية**

Dr. Man Baker

Associate Prof., Zayed University, UAE

Dr. Anas Jerab

Assistant Prof., Briton College, UAE

د. معن سعود أبوبكر

جامعة زايد - الإمارات ع. م.

د. أنس عزالدين جراب

بريتون كوليج - الإمارات ع. م.

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Abstract

This article aims to clarify the limitations of Sharia that distinguished between what a doctor must conceal and what to disclose from the secrets related to one of the spouses. The basic principle in the viewpoint of Sharia is that secrets must be preserved and concealed and that no one should be informed of them. The doctor is forbidden by virtue of religion and law from disclosing the secrets of his patients or informing anyone of them. However, this principle may not always apply to the relationship between the spouses, as it is a relationship of a special kind, governed by different dimensions including interest, rights and obligations. If the above principle is strictly applied here, it would threaten marital life and its stability. The research has shown that Sharia, since the beginnings of its stability, preserves the private life of individuals, and - by means of encouragement and intimidation - prevented the eyes and ears of intruders from violating privacy. Additionally, Sharia made provisions for the maintenance of marital relations and established the rules of stability and continuity in order to preserve the humankind and protect family harmony. Through a unique tripartite formula, it was able to balance between competing interests: keeping the secret and concealing it, maintaining marital life, and the doctor's responsibility towards his/her patients. General rules were produced for the maintenance of rights and duties, and special rules for dealing with exceptional issues without breaching or invalidating the general principles. Sharia, therefore, allowed one of the spouses to access the medical secrets of his partner for a special interest of their relation on their mutual marital life, or for a general interested to society and its protection from diseases.

Keywords: 1- Sharia Law 2- Medical Secrets 3- Contagious Diseases 4-Marital Life 5- Medical Ethics

ملخص البحث

يهدف البحث إلى بيان الحدود الشرعية التي تفصل بين ما يجب على الطبيب كتمانها أو إفشاؤه من أسرار طبية تتعلق بأحد الزوجين⁽¹⁾. فالأصل في منظور الشريعة هو وجوب حفظ الأسرار وكتمانها وعدم إطلاع أحد عليها، والطبيب ممنوع بحكم الدين والقانون أن يفشي أسرار مرضاه أو أن يطلع عليها أحد. إلا أن هذا الأصل قد لا ينسحب -دائماً- على العلاقة بين الزوجين لكونها علاقة من نوع خاص، تحكمها أبعاد مختلفة ما بين المصلحة والحق والوجوب، مما قد يجعل حكم الأصل هنا مهدداً للحياة الزوجية واستقرارها.

وقد توصل البحث إلى أن الشريعة كما تشوف منذ بدايات استقرارها إلى حفظ الحياة الخاصة للأفراد، ومنعت -بالترغيب والترهيب- عيون المتطفلين وأذانهم من أن يخترقوا جدار الخصوصية، كذلك عملت على صيانة العلاقات الزوجية وأرست قواعد استقرارها وديمومتها حفظاً للنوع الإنساني وحماية للوثام الأسري، وفي ثلاثية متفردة استطاعت أن توازن بين مصالح متجاذبة: حفظ السر وكتمانها، واستصلاح الحياة الزوجية، ومسؤولية الطبيب أمام مرضاه، فأنتجت قواعد عامة لصيانة الحقوق والواجبات، وقواعد خاصة لمعالجة المسائل الاستثنائية دون خرق للعموم أو إبطال له، فسمحت لأحد الزوجين أن يطلع على أسرار قرينه الطبية لمصلحة خاصة بأحدهما أو بحياتهما المشتركة، أو مصلحة عامة تتعلق بالمجتمع وصيانتها من الأمراض.

الكلمات المفتاحية: 1- الشريعة الإسلامية 2- الأسرار الطبية 3- الأمراض المعدية 4- الحياة الزوجية 5- آداب الطب

1- لفظ (الزوج) تطلق في اللغة على الزوج والزوجة، فيقال زوج فلانة وزوج فلان.

1. Introduction

Islamic Sharia prohibits the disclosure and spreading of secrets without special permission from their owner. Muslim scholars considered keeping secrets a form of trust. There are Qur'anic verses warning against divulging secrets and encouraging their preservation. Allah, the Almighty says:

قَالَ تَعَالَى: ﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا﴾ النساء: ٥٨

{Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing} [An-Nisa:58] ⁽¹⁾

The Almighty Allah (SWT) also said:

قَالَ تَعَالَى: ﴿وَالَّذِينَ هُمْ لِأَمَانَاتِهِمْ وَعَهْدِهِمْ رَاعُونَ﴾ المؤمنون: ٨

{and those who are faithfully true to their Amanat (all the duties which Allah has ordained, honesty, moral responsibility and trust) and to their covenants} [Al-Mu'minun: 8] ⁽²⁾.

The Sunnah of the Prophet confirmed what was stated in the Qur'an regarding the necessity to keep secrets and not to divulge them:

"When a man narrates a narration and he looks around, then it is a trust," ⁽³⁾ "Render the trust to him who deposited it with you, and do not betray him who betrayed you" ⁽⁴⁾.

Medical information is undoubtedly confidential; it must be kept away

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- 1- Al-Hilali, Muhammed and Khan, Muhammed, Translation of the meaning of the Noble Qur'an, King Fahd Glorious Qur'an, Madinah, p. 117
 - 2- Al-Hilali and Khan, Op. cit., p. 455.
 - 3- Al-Tirmidhi, Muhammad bin Eisaa, Sunan al-Tirmidhi, edited by: Bashir Maarouf, Dar Al-Gharb Al-Islami, Beirut, 1st Edition 1996, part 3, p. 509. The meaning of the hadith is that turning right and left before speaking is an indication that the speaker does not want to be heard by anyone other than the one addressed, so the addressee must keep the secret and not disclose it to anyone.
 - 4- Abu Dawood, Suleiman bin Al-Ash'ath, Sunan Abi Dawood, Dar Al-Qibla, Jeddah, 1st Edition, 1998, part 4, p. 193.

from intruders and eavesdroppers. Someone's medical information is a private matter that should concern nobody but their owner. Islamic Laws does not violate the above view, rather it confirms it and approves of its principles.⁽¹⁾ What people do not like to reveal, must be concealed. Sharia labelled someone who reveals secrets as "untrustworthy," and is liable to punishment⁽²⁾. The crime gets worse the more evil it causes, as is the case when a person is hurt as a result of divulging his secret.⁽³⁾

The general principles is that divulging secrets is forbidden and is even considered a form of gossip⁽⁴⁾. Keeping a secret is more emphasized and the sin of disclosing it is greater when it comes to violating the private lives of individuals⁽⁵⁾, such as in the case of disclosing secrets of marital life. Allah's Messenger (PBUH) said:

"The worst of people in status before Allah on the Day of Resurrection will be a man who was intimating with his wife, and she was intimating with him, then he discloses her secrets."⁽⁶⁾

All of this is due to the close relationship of each of the spouses to the other, making each of them easily aware of the other's affairs. For this reason, it was greatly emphasized that revealing each other's secrets is forbidden⁽⁷⁾.

Based on these general principles, Sharia scholars emphasized that a doctor or a surgeon must keep the secret of his patient, such as a defect in

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- 1- Al-Khudairi, Yasser, Disclosure of Medical and Commercial Secrets, PhD Thesis, Imam Muhammad bin Saud University, 2012, p.73.
 - 2- Al-Qasimi, Muhammad Jamaluddin, Tafsir al-Qasimi, Dar al-Kutub Al-Ilmiyya, Beirut, 1st Edition, 1998, part 5, p 279.
 - 3- Al-Ghazali, Muhammad, The Revival of the Religious Sciences, Dar Ibn Hazm, Beirut, 1st Edition, 2005, p. 1022.
 - 4- Al-Menoufi, Ali Bin Khalaf, Kefaya al-Taleb al-Rabbani, Al Madani Press, 1st Edition, 1989, part 4, p. 267.
 - 5- Al-Musleh, Khaled, The Doctor's Informing One of the Spouses about the Results of the Other's Examinations, the Fiqh Academy Journal, Issue 29, 2013, p. 355. Opcit
 - 6- Muslim, Muslim ibn Al-Hajjaj, Sahih Muslim, Dar Al-Minhaj and Dar Tawq- Alnajat, Jed-dah and Beirut, First edition, 2013, part 4, p. 157.
 - 7- Al-Musleh, p. 350.

his body,⁽¹⁾ or something that he hates. As a patient reveals things to his doctor that no one else sees, things whose disclosure would harm the patient, the disclosure of such secrets on the doctor's part will be considered an exposure.⁽²⁾ Likewise, a doctor must not inform anyone of what the patient said without his permission.⁽³⁾ The responsibility of doctors is greater than that of others because they see many things, and the patients come to them with secrets and things that are not usually known. Accordingly, their liability to keep secrets is greater than others⁽⁴⁾.

A decision to this effect was issued by the Council of the International Islamic Fiqh Academy at its eighth conference session, in which it was stated: "Secrecy is even more of a duty for individuals working in professions which are adversely affected by indiscretion such as medical ones. Such individuals are resorted to for the sake of advice and assistance by people who closer to them and set them now all that may help them fulfill their vital tasks properly. This may include information which one keeps from all others, including one's own kin."⁽⁵⁾

The early Sharia scholars did not address the issue of disclosing the medical secrets related to any of the spouses by the other. However, the rules and provisions of Islamic Sharia laid the foundations for dealing with this issue and deciding on its specific rules. In this paper, the concept of the medical secret that should not be revealed will be explained. We will also tackle the cases in which a doctor may inform the husband or wife of the medical secret related to his/her spouse.

This paper contributes to explaining the concession given by Islam to deal with such sensitive issues, in which the interest of one of the parties to

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- 1- Ibn Taymiyyah, Abd al-Salam bin Abdullah, Al Moharrar in Fiqh on the Doctrine of Imam Ahmad, Al Ma'arif Library, Riyadh, 2nd Edition, 1984, part 1, p. 190.
 - 2- Al-Bahouti, Mansour Bin Yunis, Explanation of Muntaha Al-Iradat, Al- Resala Institution, Beirut, 1st Edition, 2000, part 2, p.95.
 - 3- Ibn Hajj, Muhammad Ibn Muhammad, Al Madkhal, Dar Al-Fikr, Beirut, 1981, part 4, P.135.
 - 4- Al-Musleh 2013, Op. cit., p. 356.
 - 5- Journal of International Islamic Fiqh Academy, Confidentiality in Medical Professions, Issue 8, part 3, p. 15. <https://www.iifa-aifi.org/ar/1972.html>. Date:8/12/2020

conceal its secret contradicts the interest of the other party to know it. This may affect the stability and continuity of marital life, especially since the marital relationship is not like any other. In addition, the topic is considered relatively new; the early juristic literature did not address it. In order to cover both public and private aspects of the topic, the paper examines the concept of medical secrecy and Islam's respect for private life, and then the cases in which the medical secret may be disclosed to one of the spouses.

2. The Concept Of Medical Secret And The Importance Of Protecting Private Life

The journal of international Islamic Fiqh Academy defines a secret as: "whatever someone tells another with either an ulterior or subsequent request to keep it secret. This includes matters which are conventionally known to be of a confidential nature, per se, as well a person's private matters or defects which he is loath to make public."⁽¹⁾ There is no doubt that the medical secret contains many private matters that people do not want to share with others. For this reason, it is considered one of the most important secrets, being related to the person himself and dealing with his privacy that should not be informed to others, as one of his rights.

The early jurists did not provide a specific definition of the medical secret, except that they stipulated in their books the need for the doctor to keep the secret and not to divulge it: "The doctor must not inform any person of the secrets as this is considered scandalous"⁽²⁾. They also said that:

"The mufti and the doctor discover people's secrets and their private aspects of what others do not see. Thus, they have to keep secret of what is not appropriate to disclose."⁽³⁾

However, they stipulated in their books that the doctor should not allow anyone other than the patient to be aware of his condition, because the

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- 1- Journal of International Islamic Fiqh Academy, Confidentiality in Medical Professions, Issue 8, part 3, p. 15. <https://www.iifa-aifi.org/ar/1972.html>. Date:8/12/2020
 - 2- Al-Bahouti, Mansour, Kashf Al-Qenaa an Matn Al-Iqnaa, Dar Alam Al-Kutub, Riyadh, 1423AH., part 2, p. 729
 - 3- Ibn Al-Qayyim, Muhammad, E'lam Al Moaqeen an Rab al Alameen, Ibn Al Jawzi House, Riyadh, First Edition, 2002, part 6, p.197.

patient may have diseases that he does not want anyone to know anything about⁽¹⁾.

The basis for the doctor's knowing some of the patient's medical peculiarities is based on the principle of necessity. In other words, the basic principle is that no one should have access to the privacy of the other, as it is a kind of forbidden espionage. Yet, it will be permitted for necessity, which is to seek treatment. Therefore, the work of the doctor with his patients is limited to the permission they were given; what is related to the disease only. The doctor is not free to do whatever he wants, rather he is obliged to do what is in the interest of the patient without harming them. It is not permissible for doctor to uncover parts of the patient's body, except the part that is afflicted by disease or damage. Therefore, the necessity is estimated by its extent and the doctor's overstepping is considered forbidden⁽²⁾. Among the matters related to this is the prohibition of the doctor's exploitation of his profession to see the files of other patients, as long as he takes care of their condition, with no need to see their medical files, where doing so is considered a violation of privacy and spying on others.

All these refers to the precedence of early Islamic jurisprudence in respecting the privacy of the patient and the extent of the jurists' awareness of the importance of the medical confidentiality and not disclosing it. This is despite the absence of a specific definition of the term secret in their books, given the fact that it is due to respect of privacy, concealment of secrets, and also cover others to avoid the harm they might suffer in the instance their secrets are exposed.

As for contemporary Muslim jurists, they sought to clarify what is meant by the medical secret that should be concealed and not disclosed to anyone. They believe that it includes all the information that the doctor knows from his patient. It includes information related to the patient's own health, or his biography that the doctor may know when asking about the history of the disease, or because the nature of the doctor's specialty requires knowledge of it. For example, a psychiatrist would often dig deeper into the patient's

1- Ibn al-Hajj, Op. cit., part 4, p.134.

2- Canaan, Ahmad, Medical Jurisprudence Encyclopedia, Dar Al-Nafaes, Amman, First edition, 2000, p. 764.

past, personal behavior, marital life, sexual relations and other sensitive secrets of personal privacy⁽¹⁾. In other words, the medical secret includes all the information and data about the patient obtained by the doctor or whoever practices medical-related work, such as pharmacists or those who work in laboratory and radiology specialists' clinics or centers. It is not limited to information's on the type of disease or injury that the patient suffers from or on their treatment.

Rather, this extends to include examination or diagnosis, such as conducting analyzes, the result of which is positive or negative, or operations such as endoscopy and medical imaging.⁽²⁾ It also includes what the patient himself tells, and everything related to the patient's health, type of illness, biography, or health history⁽³⁾. It is not required that the medical secret be limited to negative matters, such as infectious diseases that alienate people from the person, or some forbidden behavior. Rather, the matter goes beyond that to include everything related to a person's peculiarities from what people and the health system have come to know as private, which is not permissible to pass to others.

In conclusion, the medical secret is related to hidden matters that no one can realize by the senses or by simple observation. As for anything else, such as someone's stature, whether the person is deaf and cannot speak, or in a late stage of pregnancy, these are not considered among the medical secrets. These are simple matters that are easy to realize.

3. Ruling On Informing One Spouse Of The Medical Secret Of The Other

As mentioned earlier, the marital relationship differs from other relationships, because of the closeness of each of the spouses to the other. So, each spouse is easily acquainted with the other, unlike the rest of the people. Allah described each of the spouses as a raiment for the other, in saying:

قَالَ تَعَالَى: ﴿ هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ لِبَاسٌ لَهُنَّ ﴾ البقرة: ١٨٧

1- Ibid, p. 557.

2- Idris, Abdel Fattah, Medical Issues from an Islamic Perspective, Al-Azhar University, Cairo, 1st Edition, 1993, p. 57. And Al-Khudairi, p.91.

3- Najida, Ali, Doctor's Obligations in Medical Work, Dar Al-Nahda Al-Arabiya, Cairo, 1992, p.192.

“They are Libas (i.e. body cover, or screen, or) you enjoy the pleasure of living with them, for you and you are the same for them” [Al-Baqarah: 187]⁽¹⁾

According to the commentators, ‘raiment’ signifies close contact and strong relationship⁽²⁾.

Although each of the spouses is aware of many of the peculiarities of the other party due to coexistence and mixing, this does not mean that there is no privacy for each of them that should be respected. Thus, the basic principles for the doctor's or medical worker's informing one of the spouses of the other party's medical secret is prohibition, because of the evidence which calls for keeping secrets, concealment and non-disclosure. As long as the patient does not reveal his medical secret to anyone else, it is an implicit indication that his confided information should be kept secret from others, even if it is his/her spouse. A doctor will be considered as revealing the secret of his patient, even if this secret is positive or in his favor, if the doctor discloses information related to the patient's test results, x-rays, or even his wellness, etc., to the patient's relatives, or his employer⁽³⁾.

Also, every disease that has no effect on marital life, and one whose disclosure would neither brings an interest to the other party nor prevents a harm is not permissible to be disclosed to one of the spouses by the doctor. This is based on the above principles, which must be taken into account, providing for the necessity to keep the patient's secrets, and not to disclose them except for interest or necessity; ones whose disclosure unnecessarily would do harm.⁽⁴⁾ It is known that spoiling the relationship between spouses is one of the greatest forms of harm to a person; therefore, disclosure without a valid cause or a prior permission is forbidden.

Nevertheless, Islamic Law has indicated the exceptional cases in which it is permissible to disclose a medical secret. That is, if concealment leads to

1- Al-Hilali and Khan, Op. cit., p. 38.

2- Ibn Adel, Omar, Al-Labab in the Olom Alketab, Beirut, Dar Al-Kutub Al-Ilmiyya, 1st Edition, 1998, part 3, p.308.

3- Al-Sharqawi, Al-Shehabi Ibrahim, The Doctor's Commitment to Preserving the Secrets of His Patients, Journal of Law, Kuwait University, 1429AH, p .188.

4- Ibn Hajar, Ahmad Bin Ali, Fath al-Bari Sharh Sahih al-Bukhari, Dar al-Marifa, Beirut, 1957, part 11, p.82.

harm that outweighs the harm of disclosure, or if the interest of disclosure is greater than the harm of concealment⁽¹⁾, as in the case of an infectious or life-threatening disease, disclosing this disease is an interest that takes precedence over the patient's interest in concealing it. That is because the harm resulting from this concealment is greater than the harm resulting from this disclosure. Thus, concealing a disease that harms the other party, may be in the interest of the patient himself, but harmful to the other party. Warding off the harm takes precedence over bringing the interest⁽²⁾. The principle in Sharia is to prevent damage by all possible means as much as possible⁽³⁾.

Based on these general principles and jurisprudential rules governing matters of interest's conflict with the harm, such as "no harm should be done or reciprocated," "harm must be prevented as much as possible," and "private harm shall be borne to prevent the general harm"⁽⁴⁾, the doctor may inform one of the spouses of the medical secret related to the other party. This is applicable in the following cases:

a- Infectious Diseases

If the doctor is certain that the patient suffers from an infectious disease that may be transmitted to the other spouse through intercourse or close contact, and if harm cannot be avoided, then he must inform the other party and may not conceal it.⁽⁵⁾ This is because the harm of the other party getting infected by the disease is greater than divulging the patient's secret⁽⁶⁾. In principle, the infected spouse should inform the other party of the infectious disease they have, whether when recovery is possible, such as the coronavirus (COVID-19), or is impossible as in the case of AIDS, etc. Oth-

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- 1- Journal of International Islamic Fiqh Academy, part 3, p. 15. <https://www.iifa-aifi.org/ar/1972.html>. 8/12/2020
 - 2- Al-Kubaisi, Mahmoud, Ruling on a Doctor Informing One of the Spouses of the Disease of the Other Party, Research presented to the Islamic Fiqh Academy Conference, 2012, p. 17.
 - 3- 15. Al-Zarqa, Mustafa, General Jurisprudence Introduction, Dar Al-Qalam, Damascus, 2nd edition, 2004, part 2, p. 990.
 - 4- Al-Khudairi, Op. cit., p.132.
 - 5- Al-Musleh, Op. cit., p. 368.
 - 6- Al-Khudairi, Op. cit., p.230.

erwise, he would be deceiving the other spouse. If the infected spouse does not want to tell the other, the doctor should not participate in this cheating. In this case, the doctor has to inform the other party about the reality of the disease⁽¹⁾ and its contagious nature. Among the applications of this ruling is what was decided by earlier jurists regarding the right of a healthy husband to terminate the marriage contract if the other suffers from a contagious disease to avert expected harm⁽²⁾. No doubt that the spouse who is not affected by the disease would only have this right if he/she knows the reality of the disease. Thus, it is necessary to inform them, in order to ward off harm.

In implementation of the rule: "Necessity must only be assessed and answered proportionately", perhaps the doctor should inform the other spouse of the existence of the disease and the possibility of its transmission to him/her, but without disclosing other details in respect of the patient's privacy and confidentiality. Thus, it is sufficient to inform the non-affected spouse of no more than the extent that protects him/her from damage.

b- Whatever Prevents A Normal Life

One of the purposes of marriage contract is that each of the two parties enjoys the other and achieves Ihsan [fortification from committing illegal sex]. For this reason, it is permissible for the doctor to disclose every disease or defect which prevents the fulfilment of these main purposes, and therefore, not leading a normal marital life. A disease could be psychological, such as schizophrenia, chronic depression, etc. or an organ disease such as injuries that destroy the ability to have sexual intercourse or weaken it severely⁽³⁾. This includes the occurrence of distortions that prevent enjoyment or its perfection, or cause one of the spouses to alienate the other to an extent that cannot tolerate him/her. In this case, the spouse should have the right to choose to terminate the marriage contract⁽⁴⁾.

1- Al-Ashqar, Muhammad, Disclosure of the Secret in Islamic Law, Research of Symposium on Islamic Vision of Certain Medical Practices, 1987, p. 103.

2- Al-Khudairi, Op. cit., p266.

3- Al-Musleh, Op. cit., p. 369.

4- Al-Zubaidi, Ibrahim, Provisions of Physical Deformities, Master's Thesis, Imam Muhammad bin Saud University, 1429AH, p. 235.

This ruling is based on the harm inflicted on one spouse due to the loss of his/her right to get pleasure with the other, whether the harm is material or psychological. The scholars have determined that every defect that prevents the achievement of the intended purpose of marriage contract, including mercy and affection, gives the other spouse the right to choose whether to stay or separate⁽¹⁾.

c- Whatever Affects Offspring

Preservation of offspring is one of the five main objectives of Islamic Law. It is the right of both spouses, not just one of them, to have children. Therefore, diseases that may affect the ability to have children, which are known as hereditary diseases, such as sickle cell anemia and metabolic diseases, may be disclosed by the doctor. Further, it may be necessary to disclose the disease according to its severity, incidence percentage and the possibility of its treatment. This is because the safety of the offspring is sought by the parents, and by society with greater reason. Therefore, the other party should be informed of the results of the tests that prove the possibility of transmitting genetic diseases to the offspring and descendants⁽²⁾.

This includes the patient's sterility. Therefore, a doctor may inform the other spouse of that case, because having children is their right. The disclosure should be restricted to an appropriate limit, without exposure of the pathogens of the disease or other irrelevant matters⁽³⁾. This is not limited to infertility only; a doctor can inform the other spouse in case there are temporary problems that lead to a delay of childbearing.

d- Patient's Refusal To Cooperate With The Doctor

If a patient does not cooperate with the doctor in receiving treatment, making the doctor in need of the patient relative's help, then it will be permissible for the doctor to divulge the patient's secret to those who are most likely to persuade the patient to receive treatment. A husband could be informed of the wife's health problem for that same purpose, but disclosure

1- Ibn al-Qayyim, Muhammad Ibn Abi Bakr, *Zad al-Ma'aad Fe Hadi Khair al-Abbad*, Dar al-Risalah, Beirut, 27th edition, 1994, part 5, p. 166.

2- Al-Musleh, Op. cit., p. 369.

3- Al-Khudairi, Op. cit., p.309.

should be restricted to the necessary extent. It is not permissible for a doctor to disclose all information related to the patient, since disclosure should be restricted to the extent required for treatment⁽¹⁾. This is because there is a contradiction between the harm resulting from disclosure of the patient's secret and the interest of preserving his/her life. Here the medical secret of the patient has no value if his/her life is threatened entirely. Thus, the interest of self-preservation takes precedence over keeping the secret. In other words, if the patient's life can only be preserved by informing the other spouse of his/her health condition to persuade the patient to cooperate for recovery, this should be done.

4. Conclusions

Sharia is concerned with keeping secrets and forbids their disclosure without the permission of its owner. The jurists considered that a medical secret is one that a doctor must keep, except from their owners; these should not be released without their permission. By virtue of their work, a doctor must be aware of what information should be kept from others, regarding disease history, birth defects, or family secrets, whose disclosure would offend the patient. The early juristic literature did not define the medical secret the way contemporary jurisprudence did; however, it had its own definition which covered the meaning and content, and set many of its rulings. It also set controls for the work of the Muslim physician, defining what is permissible to seek information of and what is not. The jurists relied on the juristic rules controlling the issues of harm and interest, according to the knowledge of their times, including juristic issues related to the patient, his/her secret and his relationship with his/her family.

Since a doctor is entrusted with the secrets of the patients, it is not permissible to inform anyone of them. The secret is everything that is concealed from others' sight or perception, such as the occurrence of the disease, its name, nature and impact, or congenital deformities and distinguishing signs that are hidden under clothes, even if they are not harmful to the patient or are positive, not negative. All these are considered medical secrets that a doctor does not have the right to inform others about, even if they concern any one of the spouses. Thus, concealing these from the other spouse is a duty from a professional, legal and religious perspectives.

1- Ibid., P233.

However, this general rule may have some exceptions that are necessary, in order to protect the marital relationship and keep the family harmony, which is tops of the interests of Islamic Law. The relationship between the spouses is not like any other mutual relationship. Therefore, it is important to define the cases or circumstances due to which the doctor has the right to inform one of the spouses about his life partner's illness or his sick secret. These exceptional cases are imposed in order to achieve a specific interest, or maintain a balance between the harm that done by disclosing a secret or concealing it.

Some example cases are: when one of the spouses suffers from an infectious disease that the doctor fears it could be transmitted to the other spouse, especially when it is life-threatening, pain-causing, or one that hinders either party from having intercourse with the other due to bodily weakness or impotence. This could also include defects that affect child-bearing, either due to hereditary diseases or infertility. In such cases a doctor is obliged to inform the other spouse. Another case is when the patient is not cooperating in the treatment of the disease, putting himself or those around him, like the spouse or children, at risk. In such case, a doctor is allowed to inform any person who has the ability to influence the patient, in order to convince him, or even to inform the authorities of the patient's negligence to have him do what must be done. Cases of disclosure have been allowed for necessity, but necessity is to be estimated equal to its extent without exaggeration. This rule has many applications for those who have the right to know the medical secret: its nature, time, and details. These applications shall be considered case by case.

Finally, this study has revealed the need for a legislation that identifies the ailments which medical doctors are allowed to disclose to one of the spouses without the other's consent. Such ailments list is subject to be updated periodically depending on the nature of the ailments, its severity, impact, and other variables.

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